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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/690,781	10/17/2000	Karen L. Eagles	Mo-5137/MD-98-12-PF	3632

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BAYER CORPORATION
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EXAMINER

PAK, JOHN D

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 12/19/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

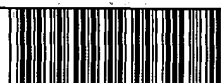
Office Action Summary

Application No.
09/690,781

Applicant(s)
Eagles et al.

Examiner
Pak, J.

Art Unit
1616



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2 20) ☐ Other:

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Claims 1-24 are pending in this application.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 9, 10, 12 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over CABA abstract 78:64467.

CABA abstract 78:64467 explicitly discloses the combination of 0.6% vofasteril and 7-10% copper sulfate. Vofasteril is 34% peracetic acid, hence the disclosed 0.6% concentration is approximately 0.2% peracetic acid.

Instant claims are anticipated by the cited reference because the actual combination of the claimed biocidal mixture with a fungicide, copper sulfate, is disclosed. While hydrogen peroxide is not expressly disclosed as being a part of vofasteril, it must necessarily be present in equilibrium with peracetic acid. Even though vofasteril is not expressly disclosed as having biocidal effect on microorganisms growing in a copper sulfate formulation, such effect cannot be avoided and must

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necessarily be present due to its inherent biocidal properties. The claims are thereby anticipated or at the very least rendered obvious within the meaning of section 103.

Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirk-Othmer Encyclopedia of Chemical technology (hereinafter, Kirk-Othmer).

Kirk-Othmer discloses peracetic acid as a powerful disinfectant with broad-spectrum activity against microorganisms (see p. 256, second full paragraph). Aqueous solutions of peracetic acid are “comprised of the acid in combination with hydrogen peroxide, acetic acid, sulfuric acid, water, and a stabilizing agent,” wherein the concentration of hydrogen peroxide may considerably exceed that of the peracetic acid (paragraph bridging pages 256 and 257).

While Kirk-Othmer does not expressly disclose the use of peracetic acid (with hydrogen peroxide and water) for inhibiting the growth of microorganisms in a pesticide suspension, as claimed, given the well known powerful broad-spectrum disinfectant activity of peracetic acid, such use would have been well suggested. Using peracetic acid formulations, with accompanying formulation ingredients hydrogen peroxide and water, for the purpose of controlling microorganism growth is using peracetic acid precisely for its known functionality. The fact that the medium or substrate is a pesticidal suspension fails to distinguish the claims. One having ordinary skill in the art, when faced with microbial contamination problems in pesticidal suspensions, would have looked to available microbicides for control. Because peracetic acid is such a well known and powerful microbicide, the ordinary skilled artisan would have been motivated to incorporate it to suspensions of pesticides that are susceptible to undesirable growth

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of microorganisms. Specifics of concentrations of peracetic acid, hydrogen peroxide and water that are claimed herein are held to be well within the skill of the ordinary skilled artisan, who would have been capable and motivated to adjust or use various initial concentrations of peracetic acid formulations, given the desired ppm peracetic acid in the medium to be treated (note Kirk-Othmer at p. 256 discloses various concentration strength effective for fungi, bacteria, yeast and spores). Specifics of particular pesticides (see e.g. applicant's claims 5-7) would have been obvious to the ordinary skilled artisan as he/she would have been motivated to apply disinfectants to such pesticidal suspensions that are susceptible to microorganisms growth. Therefore, the claimed invention, as a whole, would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, because every element of the invention has been fairly suggested by the teachings of the cited reference.

A facsimile center has been established in Technology Center 1600. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier numbers for accessing the facsimile machines are (703) 308-4556 or (703) 305-3592.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Examiner Pak whose telephone number is (703) 308-4538. The Examiner can normally be reached on Monday through Thursday from 8:00 AM to 5:30 PM. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Mr. José Dees, can be reached on (703) 308-4628.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1235.


JOHN PAK
PRIMARY EXAMINER
GROUP 1600